IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 386
CHAMBER ONE
AWARD NO. 507-386-1

GENERAL ELECTRIC COMPANY,
on behalf of its Aircraft
Engine Business Group,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
MILITARY INDUSTRIES ORGANIZATION,
IRAN AIRCRAFT INDUSTRIES,
BANK MARKAZI IRAN,
Respondents.

AWARD

Appearances:

For the Claimant:	Mr. Joseph P. Griffin, Mr. Mark N. Bravin, Attorneys, Mr. Frank N. Iden, Mr. John C. Sevier, Representatives of General Electric Company.
For the Respondents:	Mr. Mohammad K. Eshragh, Agent of the Government of the Islamic Republic of Iran, Mr. Ali H. Nobari, Deputy Agent, Mr. Mohammad H. Bordbar, Legal Adviser to the Agent, Mr. K.A. Kamayestani, Assistant to the Agent, Mr. Seyed Hadi-Hosseini, Legal Adviser to the Military Industries Organization, Mr. Seyed Ahmad Ghorashi, Financial Adviser to the Military Industries Organization, Mr. Mohammad Ali Behabadi, Mr. Hossein Ali Farzad, Representatives of Bank Markazi Iran.
Also present:	Mr. Michael F. Raboin, Deputy Agent of the Government of the United States of America.

Table of Contents

I. PROCEEDINGS

A. Overview of Procedural History

1. The Claimant, GENERAL ELECTRIC COMPANY ("GE" or the "Claimant"), a manufacturer of aircraft engine products, filed its Statement of Claim on 18 January 1982. It seeks damages for alleged breaches of a Distribution Agreement, a Repair Contract and a Service Representatives Contract with IRAN AIRCRAFT INDUSTRIES ("IACI" or the "Respondent") and, in addition, costs of evacuating its service representatives from Iran. GE also seeks declaratory relief absolving it from certain contingent liabilities under bank guarantees and letters of credit. At the date of the Hearing, the monetary relief sought by GE totaled $11,199,767[1] plus interest and costs.

2. The Respondents, THE GOVERNMENT OF IRAN ("Iran"), IACI, MILITARY INDUSTRIES ORGANIZATION and BANK MARKAZI IRAN ("Bank Markazi"), each filed Statements of Defense. IACI raises Counterclaims based on the Distribution Agreement and the Repair Contract. Counterclaims are also raised in respect of GE's alleged tax and social insurance liabilities.

3. After an exchange of written pleadings and evidence, a Hearing was held on 24 and 25 November 1988. Mr. Karl-Heinz Böckstiegel, whose resignation took effect on 15 December 1988, continued to participate in the Award in this Case pursuant to Article 13, paragraph 5 of the Tribunal Rules.

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[1] All references to dollars in this Award are to United States dollars.

B. Procedural Objections

1. Changes in the Relief Sought by the Claimant

4. IACI objects to what it describes as a change in the legal basis of GE's claim based on the Distribution Agreement, which resulted in an increase in the amount of damages sought for this claim during the proceedings.

5. In its Statement of Claim, GE sought damages for breaches of the Distribution Agreement which it assessed at "not less than $5,713,726.02." The relief sought was substantially increased in GE's Hearing Memorial, filed on 22 December 1986, in which the damages claimed under the Distribution Agreement were alleged to be $10,683,109. Of the amount claimed, $8.7 million was based on the theory that GE was entitled to damages as a "lost volume seller" under New York law. This theory was introduced in the Hearing Memorial, without any change in the factual and legal basis of the claim, and was fully briefed in that filing. Apart from a slight adjustment in the amount claimed in GE's Rebuttal Memorial filed on 18 June 1987, GE has not changed its position since the filing of the Hearing Memorial.

6. Article 20 of the Tribunal Rules allows a party to "amend or supplement" its claim or defense "unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances" and provided that it "not be amended in such a manner that the amended claim falls outside the jurisdiction of the arbitral tribunal." The legal argument concerning the lost volume seller issue, which was presented by GE in its Hearing Memorial, was based on the same underlying cause of action

as that presented in its Statement of Claim. The Tribunal has stated that

> [n]ew legal arguments are less likely to cause prejudice and are accordingly treated somewhat more liberally. Nonetheless, the Tribunal will examine whether the other party has had an opportunity to respond to the document, whether it is likely to cause prejudice, and the length and cause of the delay.

Harris International Telecommunications, Inc. and Islamic Republic of Iran, et al., Partial Award No. 323-409-1, para. 68 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 50 ("Harris"). There are disputes over whether the change in this Case constitutes an amendment within the meaning of Article 20; however, in the circumstances of this Case, there is no need to decide this issue because the Tribunal finds that, even if it was an amendment or supplement, the change neither prejudiced the Respondents nor delayed the proceedings.

2. Late-filed Counterclaims

7. Article 19, paragraph 3 of the Tribunal Rules provides that a respondent should raise any counterclaim "[i]n the Statement of Defense, or at a later stage of the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances." Moreover, as just discussed, Article 20 permits a party under certain circumstances to "amend or supplement his claim" during the course of the proceedings.

8. On 1 March 1984, IACI filed a Statement of Defense in which it raised counterclaims for the reimbursement of certain advance payments and discounts under the Distribution Agreement and for the return of certain items under the Repair Contract. On 24 May 1984, the Claimant filed its reply and defense to the counterclaims. On 27 February 1985, IACI filed its rejoinder and response to the Claimant's defense to the Counterclaims. On 13 March 1986,

IACI filed an additional counterclaim based on GE's alleged failure to pay certain social insurance premiums under the Technical Services Agreement. IACI explained that its failure to file this counterclaim previously was caused by the complexity of the issue and the burden placed on the Social Insurance Organization ("SIO") in processing the large number of counterclaims raised by cases before the Tribunal. The Claimant did not respond to this counterclaim in its Hearing Memorial filed on 22 December 1986, but did so in its rebuttal which was filed on 18 June 1987. In that document, the Claimant mentioned that the counterclaim was filed late but did not raise substantial objections to its admissibility. In its Rebuttal Memorial filed on 3 August 1987, IACI raised yet another counterclaim for $8.5 million based on GE's alleged breaches of the Distribution Agreement.

9. Article 19 of the Tribunal Rules permits a late-filed counterclaim if "the delay was justified under the circumstances." This rule has "generally been applied to dismiss counterclaims filed after the Statement of Defense where the Respondent has not provided a justification for the late filing." United Painting Company and Islamic Republic of Iran, Award No. 458-11286-3, para. 10 (20 Dec. 1989), reprinted in ___ Iran-U.S. C.T.R. ___, ___ (referring to Ultra Systems Incorporated and Islamic Republic of Iran, et al., Partial Award No. 27-84-3, p. 21 (4 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 100, 113). In this Case, the Respondent has explained that the late filing of its social insurance counterclaim was caused by the complexity of the issue and the problems facing the SIO in handling the large number of cases before it. Although the Tribunal notes both the general nature of this explanation and that the alleged complexity of the issue would not have prevented IACI from at least raising it earlier, the Tribunal decides to admit this counterclaim because of the lack of prejudice to the Claimant or delay in the proceedings.

10. IACI's counterclaim based on GE's alleged breaches of the Distribution Agreement was raised for the first time in its Rebuttal Memorial, filed on 3 August 1987. As a matter of definition, new counterclaims do not properly form part of the rebuttal phase of a party's presentation of its case. In conformity with its previous practice, and on the basis of considerations of delay and the obvious prejudice to the opposing party were such a filing allowed, the Tribunal finds this counterclaim to be inadmissible. See, e.g., Harris, Partial Award No. 323-409-1 at paras. 57-70 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. at 45-51.

II. JURISDICTION

A. Nationality

1. Claimant

11. The Claimant, GE, brings claims on its own behalf[2] and as assignee of the claims of General Electric Technical Services Company, Inc. ("GETSCO"), GE's wholly-owned subsidiary. The standard established by this Tribunal for American corporations to prove their United States nationality is put forth in the Orders in General Motors and Flexi-Van. See Order of 20 December 1982 in Flexi-Van Leasing, Inc. and Islamic Republic of Iran, Case No. 36, Chamber One, reprinted in 1 Iran-U.S. C.T.R. 455; Order of 21 January 1983 in General Motors Corp., et al. and Government of the Islamic Republic of Iran, et al., Case No. 94, Chamber One, reprinted in 3 Iran-U.S. C.T.R. 1.

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[2] Certain of these claims arise out of the activities of GE's unincorporated operating group Aircraft Engine Business Group ("AEBG"). The Tribunal need not separately consider the nationality of AEBG, however, because there is no legal separation between GE and AEBG. In the remainder of this Award, activities of both AEBG and GE will be attributed to GE.

12. The Claimant in this Case has provided evidence complying with the requirements set forth in those Orders. With respect to GE, the Claimant has filed a certificate indicating that it has been organized and existing under the laws of the State of New York since 1892. Moreover, the Claimant has filed the relevant pages of its proxy statements, as well as evidence establishing that at all times relevant to this proceeding more than ninety-nine percent of GE's shares were held by shareholders of record with United States addresses. On this basis, the Tribunal is satisfied that GE is a United States national within the meaning of the Claims Settlement Declaration. See General Electric Company and Pars Appliance Manufacturing Company, et al., Award No. 29-92-1 (14 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 132. The Tribunal therefore has jurisdiction over the Claimant in this Case.

13. With respect to GETSCO, the Claimant has presented evidence establishing that it has been organized and existing under the laws of the State of Delaware since 1961. The evidence further includes that required by the General Motors Order to establish that GETSCO is wholly-owned by GE, a United States national. The Tribunal therefore finds that GETSCO is also a United States national within the meaning of the Claims Settlement Declaration.

2. Respondents

14. The Claims in these Cases are brought against Iran, IACI, Military Industries Organization and Bank Markazi.

15. With respect to IACI, the Tribunal is convinced that it is an entity controlled by the Government of Iran. The International Distribution Agreement which forms the basis for the most substantial claim in this Case states

that IACI is "wholly owned by the Imperial Government of Iran." Moreover, this Tribunal has held that IACI is "a subsidiary of the Military [Industries] Organization of Iran, which is an agency of the Ministry of National Defense." See Theodore Lauth and Islamic Republic of Iran, Award No. 233-10335-3, p. 2 (8 May 1986), reprinted in 11 Iran-U.S. C.T.R. 150, 151. The Tribunal therefore has jurisdiction over the claims against IACI. See also Pan American World Airways, Inc., et al. and Government of the Islamic Republic of Iran, et al., Award No. 96-488-1 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 205; National Airmotive Corp. and Islamic Republic of Iran, et al., Award No. 58-499-3 (14 July 1983), reprinted in 3 Iran-U.S. C.T.R. 91. The Claimant concedes that in light of this finding, the Military Industries Organization "need not be considered a respondent [] in this case."

16. Bank Markazi is the central bank of Iran and is wholly owned by the Government of Iran. This Tribunal has repeatedly upheld its jurisdiction over Bank Markazi. See, e.g., Hood Corporation and Islamic Republic of Iran, et al., Award No. 142-100-3, p. 8 (13 July 1984), reprinted in 7 Iran-U.S. C.T.R. 36, 42.

17. With the exception of the Military Industries Organization, the controlled status of which need not be decided, the Tribunal therefore finds that it has jurisdiction over the Respondents in this Case.

B. Assignment of Claim

18. The third and fourth claims arise out of a contract between IACI and GETSCO, the wholly-owned technical services subsidiary of GE. GETSCO is not named as a Claimant, although the Tribunal is satisfied of its United States nationality. See supra at para. 13. GETSCO executed an assignment of these claims in favor of GE on 20 December

1980, and GE brings these claims on the basis of that assignment.

19. The Respondents have objected to the admissibility of these claims. Their first objection is based on a clause in the Service Representatives Contract prohibiting the assignment of GETSCO's rights and obligations under that contract to a third party. The Tribunal does not find this objection convincing. Such clauses are typically included in service contracts to ensure that the contracting party actually performs the work undertaken. These clauses have no relevance to the assignment of claims arising out of the contract after its expiration, particularly in a case such as this where the assignment is to the parent company of the contracting party and the parent was specifically identified in the preamble to the Service Agreement. The Tribunal thus concludes that the assignment of the claims by GETSCO to GE was valid.

20. The Respondents raise the further objection that GETSCO's assignment of the claims to GE defeats the jurisdictional requirements of the Claims Settlement Declaration requiring continuous ownership of claims. However, the Tribunal has held repeatedly that the criterion laid down in Article VII, paragraph 2, of the Claims Settlement Declaration is that of "continuity of Claimants' nationality, not continuity of Claimants' identity" and that assignments such as this do not affect its jurisdiction. See, e.g., Richard D. Harza, et al. and Islamic Republic of Iran, Award No. 232-97-2, para. 22 (2 May 1986), reprinted in 11 Iran-U.S. C.T.R. 76, 84. The Tribunal therefore concludes that it has jurisdiction over these Claims.

III. MERITS

21. The Claims which form the basis of this Case arise out of three separate contracts. The Tribunal will consider

these contractual relationships, and the claims and counter-claims relating to each of them, separately.

A. Distribution Agreement

1. Factual Background

22. The largest of GE's claims is based on alleged breaches of a Distribution Agreement, entered into with IACI on 5 April 1976 and effective for three years from 21 March 1976 to 20 March 1979. Under the Distribution Agreement, IACI was appointed authorized distributor for Iran of certain aircraft engines, parts, materials, tools and components manufactured by GE. GE was to manufacture or procure items ordered by IACI for its inventory. Sales made under the Distribution Agreement were to be subject to GE's standard terms and conditions of sale, which provided, inter alia, that New York law was to govern. Under Article 6 C (1) of the Distribution Agreement, payment was to be made

> in U.S. dollars through the medium of a Letter of Credit which shall be established and maintained in sufficient amounts to cover the timely payment of any amounts which become payable hereunder by Distributor to the Company. Such Letter or Letters of Credit shall be established within thirty (30) days after placing the respective Order [and] will be amended from time to time in accordance with delivery schedule of the respective orders to reflect the amounts required.

23. The Distribution Agreement was satisfactorily performed on both sides until some time in 1978. GE claims to have manufactured or procured over $64 million worth of goods in response to purchase orders issued by IACI and accepted by GE under the Agreement. The two largest purchase orders were Orders No. 01297 and No. 01299, both of which were placed on 5 July 1977. These were treated as a single order for the purpose of calculating discounts, and their combined value, after renegotiation to take account of appropriate discounts, was $38,574,166.

2. Contentions of the Parties

24. GE alleges that IACI breached the Distribution Agreement in two principal respects. First, it argues that, after March 1978, IACI consistently failed to ensure that there were sufficient funds in the letters of credit to cover outstanding invoices, despite GE's "repeated requests" for more money. GE contends that its representatives in Iran communicated these requests to IACI at "frequent meetings."

25. In response, IACI denies having failed to make adequate funds available at any time. It contends that GE did not provide the delivery schedules that were required as a condition for increasing the funding. IACI claims that its continuing intention to make payment was known to GE, that it substantially increased the funding in the letters of credit whenever requested to do so by GE, and that it even opened fresh letters of credit after the Islamic Revolution. It attributes any problems in obtaining payment to GE's failure to present the proper shipping documents to the banks in a timely fashion.

26. The second breach alleged by GE concerns the payment procedures established under the letters of credit. First, GE alleges that when IACI established the letters of credit it insisted on payment terms not contemplated by the Distribution Agreement. One such term was a requirement that GE present an airway bill establishing that the goods had been shipped by Behring International, Inc. ("Behring"), IACI's freight forwarding agent in the United States, to IACI; in contrast, the Distribution Agreement only required an invoice "evidencing delivery of each shipment F.O.R. or F.O.T factory." The Claimant alleges that although it protested these additional payment requirements, IACI refused to eliminate them. Moreover, GE alleges that Behring's failure to provide the necessary airway bills in

time for it to present them for payment within the 21-day period of their validity prevented GE from receiving payments. GE argues that the defects in the documentation were caused by delays by Behring, IACI's agent, and that IACI is therefore responsible for any defects in the documents. Three of the banks in question finally agreed to allow GE to draw on the letters of credit notwithstanding the faulty documentation, provided that GE indemnified payment. GE alleges that the level of such indemnities had risen to $3.3 million by November 1978. GE claims that IACI breached its good faith obligation to waive technical defects in the shipping documents and approve payments made subject to such indemnities.

27. IACI contends in response that the letters of credit established and accepted by GE clearly required payment against airway bills and that this practice was followed by the Parties even before they entered into the Distribution Agreement. IACI points out that approximately $49 million was paid pursuant to this procedure. IACI claims that the documents submitted by GE to obtain payment were defective and that GE -- not IACI -- was responsible for ensuring proper documentation. GE further contends that after Behring refused to make further shipments for IACI beginning in February 1979, IACI was under an obligation to engage another freight forwarding agent to enable GE to continue making deliveries. IACI replies that nothing prevented GE from shipping the goods directly to Iran, as it did at least once by Pan American Airlines.

28. GE states that it suspended shipments under Purchase Orders No. 01297 and No. 01299 on 22 November 1978, allegedly in response to IACI's breaches of contract. On 11 December 1978, it extended the suspension to cover the remaining orders placed pursuant to the Distribution Agreement. GE claims that this was a proportionate and reasonable measure taken to mitigate its losses, and that it

was authorized by Article 6 C (5) of the Distribution Agreement. GE claims that it informed IACI of its decision in December 1978, and discussed the matter repeatedly with IACI in 1979. GE states that it had intended to resume deliveries once IACI cleared its payment deficit, but that further shipments became impossible after Behring terminated its relationship with IACI in February 1979, and in view of IACI's failure to designate a substitute freight forwarding agent. GE notified IACI of the suspension on 19 March 1979. The Distribution Agreement expired by its terms on 20 March 1979.

29. IACI contends that GE's suspension was unjustified and itself constituted a breach of contract. IACI claims that it acted in good faith without being informed of the suspension between November 1978 and 19 March 1979, when it was first notified of the suspension on the last day the Agreement was in effect, and after GE began to allocate its products to other customers in February. It argues, furthermore, that circumstances of force majeure then in effect would have operated to discharge it from any obligation to make further payments or to engage a substitute freight forwarding agent.

3. Claims

a. Tribunal's Findings

30. The Tribunal's determination of whether the Distribution Agreement was breached by either Party requires it to examine closely the facts surrounding the operation of the Agreement, and the funding of the letters of credit, in 1978 and 1979. In this respect both Parties have submitted evidence consisting of charts, payment breakdowns and internal correspondence indicating the dates that GE requested additional funding and IACI's subsequent increases in funding. The Tribunal notes that the evidence in this

respect is finely balanced and lends itself to rather different interpretations than those advanced by either GE or IACI.

31. Each Party would interpret IACI's payment obligations by placing emphasis on different provisions of Article 6 C (1). GE contends that the essence of IACI's obligation lay in the provision that

> Payment for the products shall be made by the Distributor to the Company in U.S. dollars through the medium of a Letter of Credit which shall be established and maintained in sufficient amounts to cover the timely payment of any amounts which become payable hereunder by Distributor to the Company. (Emphasis added.)

GE's position is that IACI was obligated under this contract provision to make sufficient funds available to cover items shipped and invoiced at any given time. IACI contends, by contrast, that its obligation to provide increased funding was specifically dependent upon the provision of delivery schedules by GE and that GE failed to make this information available. IACI relies, in particular, on the provision in Article 6 C (1) immediately following the sentence quoted above which states:

> Such Letter or Letters of Credit shall be established within thirty (30) days after placing the respective Order [and] will be amended from time to time in accordance with the delivery schedule of the respective Orders to reflect the amounts required. (Emphasis added.)

In the Tribunal's view, a strict interpretation of the payment provisions is less relevant than an examination of the practice adopted by the Parties during the period the Distribution Agreement was in effect, and in particular to the practice of the Parties with respect to the two major orders.

32. Letters of credit relating to Purchase Orders Nos. 01297 and 01299 were opened on 1 September 1977. Both were issued by Bank Markazi through Manufacturers Hanover Trust Company ("Manufacturers Hanover"). The first letter of credit was for $10,615,376.61 and was valid until 30 August 1979; the second was for $4,546,996.65 and was valid until 30 August 1980.

33. With respect to both Orders, the record contains internal telexes from GE in the United States to GETSCO in Iran on 16 June 1978, 9 September 1978, and 20 October 1978, each complaining of underfunding in the letters of credit and requesting GETSCO to contact IACI to ensure that more money was made available. The telex of 16 June 1978 stated, "as you can see, we are shipping extremely close to our monthly forecasts. We need your assistance to obtain LOC funding increases to cover material shipments for the upcoming month per the following schedule." The telex then listed the amounts required to cover shipments through the month of October 1978. The 9 September 1978 telex stated that "We are presently underfunded, repeat, underfunded, by 2.1. M. . . . In summary, we urgently require the funding level to be increased." Furthermore, the telex sent on 20 October 1978 set out "detailed funding requirements" to enable GE to "complete the order including all shipments, all billing, and all payment collection by the end of March 1979."

34. Whether these messages were transmitted to IACI is unclear. Mr. Therrien refers in his affidavit to having "met often with IACI personnel" in an effort to resolve the payment problems, however, the extent to which the delivery schedules were also communicated to IACI is not apparent. The issue of delivery schedules does appear to have been the subject of regular discussions in Iran, though not of formal correspondence.

35. IACI did, however, continue to increase the funding under the two letters of credit, albeit at irregular intervals and always on dates later than those expected by GE. Referring to the receipt of increased funds on Purchase Order No. 01299, GE noted in its telex of 20 October 1978 that it was "covered through November." It is significant that, with reference to Order No. 01297, an increase of $1.5 million was made on 8 November 1978 and that further substantial payments were made during 1979, after the success of the Islamic Revolution. Likewise, GE continued to make shipments until it took the internal decision in November 1978 to place further shipments "on hold."

36. GE characterizes this action as a suspension in response to IACI's breach. Article 6 C (5) of the Distribution Agreement provides:

> If the Distributor fails to fulfill any condition of this "Terms of Payment" paragraph, the Company may suspend performance and any expense incurred by the Company in connection therewith shall be payable by the Distributor. If such nonfulfillment is not rectified by the Distributor promptly upon notice thereof, the Company may terminate performance and the Distributor shall pay the Company its termination charges upon submission of the Company's invoices.

The evidence does not indicate, however, that GE regarded IACI's late payments as a breach at the time, or that its actions in November 1978 amounted to a "suspension" in response. In fact, an internal GE directive of 14 February 1979 referred to Article 6 C (5) and states, "suggest formal notice be given in a legal manner."

37. No such notice was given. Instead, the evidence establishes that GE chose to maintain continued contact with IACI in the hope of preserving their business relationship and obtaining funds as soon as this became possible. Communications between the Parties in 1979 confirm that IACI made clear its intention to make payments when the situation

eased, and that GE was prepared to accept these assurances. For example, on 18 April 1979, Mr. Wall of GE telephoned Mr. Emadzadeh of IACI. Mr. Wall reported in an internal memorandum that Mr. Emadzadeh had given a clear undertaking that IACI would pay, though it needed "time to get funds and authorization to allocate them to specific obligations." Mr. Emadzadeh also appeared to assume that GE would continue with ongoing repair work. Mr. Wall related further that he "made no comment to him but I expect we will require cash prior to performing any additional work." A subsequent file memorandum by Mr. Wall, referring to a June 1979 telephone conversation with Mr. Emadzadeh, recorded the impression that "Iran has every intention of paying their bills and intends to continue to do business with G.E."

38. The Tribunal considers these facts to be a clear indication that GE was not at the time treating IACI as in breach of the Distribution Agreement by reason of its delays in making payment. Likewise, GE's decision internally to reallocate to other purchasers items ordered by IACI is not inconsistent with a decision to continue to preserve the business relationship. In the absence of any contractually binding delivery dates for such items, it cannot be argued that GE was in breach of its obligation to manufacture or procure them under the Distribution Agreement. On the contrary, GE's production capacity was such that it could have revised its manufacturing program to ensure supplies once it was assured that funds would be available.

39. The Tribunal concludes that, instead of giving IACI notice and requiring it to rectify the delay in payment, GE chose to maintain contact in the belief that, given IACI's evident good faith, the increased funds would be forthcoming. The picture that emerges from the evidence does not, in the Tribunal's view, support an ex post facto finding that the Agreement was brought to an end by breach. Neither Party exercised its right to give notice and

terminate the Distribution Agreement; both clearly wished it to continue until its expiration. In so doing, GE and IACI showed their willingness to accept that the terms of the arrangement had, in practice, varied somewhat from the terms of the Distribution Agreement, and to proceed on that basis.

40. The Tribunal's overall conclusion, then, is that the Distribution Agreement was not brought to an end by either Party exercising its remedy for breach. Instead, it continued until it expired by its terms on 20 March 1979. Notwithstanding this expiration of the Distribution Agreement, however, both Parties remained responsible for their "obligations . . . under any purchase order of Distributor which was accepted by [GE]" prior to the date of expiration.

41. On 19 March 1979, the day before the Distribution Agreement expired, GE informed IACI that it was suspending performance under the outstanding purchase orders. Concerning the suspension that telex states:

> All shipments are on hold. No transport available. We therefore have suspended previous schedules.

The telex furthermore makes it clear that some $3.1 million was then outstanding on Orders Nos. 01297 and 01299. It also referred to the drafts drawn by GE on these Orders that the United States' banks had refused to honor because the documents presented were stale and that although GE had "temporarily solved" the problem by providing indemnities, it nonetheless required IACI to formally approve the payments. IACI failed to do so.

42. After GE notified IACI of the suspension on 19 March 1979, and gave IACI the opportunity to cure its payment problems, GE had the option to discontinue performance under the outstanding purchase orders unilaterally

without further notice to IACI. The record in this Case establishes that GE exercised this option and terminated performance under the outstanding purchase orders at least by May 1979, when it began to sell products manufactured for IACI at a loss. Moreover, after May 1979 no mention is made by either Party of further performance under the outstanding purchase orders, although the Parties continued through October 1979 to discuss IACI's payment of amounts due for items previously delivered to IACI. The payment problems were not resolved, however, and over $3 million dollars remains outstanding at the date of this Award for goods delivered by GE to IACI and not paid for.

43. An issue raised by IACI is whether GE was justified in mitigating its damages by selling items produced for IACI at a loss when advance payments were available in amounts greater than the balance past due for previous deliveries. At the time that GE exercised its option to discontinue performance under the outstanding purchase orders, GE had at its disposal $4,171,462 in unapplied advance payments, but the letters of credit were underfunded by $3,193,000 -- leaving a balance of only $978,462 to apply against $16,569,000 in outstanding, albeit suspended, IACI purchase orders. In these circumstances the Tribunal finds that GE was not only permitted, but indeed was obligated, to mitigate its damages and that the steps undertaken by GE in this respect were not unreasonable. See Ford Aerospace & Communications Corp. and Government of the Islamic Republic of Iran, et al., Partial Award No. 289-93-1, para. 46 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 24, 36.

44. For these reasons, the Tribunal finds that IACI is obligated under the terms of the Distribution Agreement to reimburse GE for its damages, including mitigation claims, incurred under the outstanding purchase orders. Given this decision, the Tribunal need not consider the Claimant's allegations of breach based on Behring's alleged failure to

provide the documents required to permit payment in a timely manner, or those concerning IACI's alleged failure to provide a substitute freight forwarder.

b. Damages

45. GE claims five categories of damages allegedly arising out of the outstanding purchase orders: first, GE claims $3,209,326 in damages for items delivered to IACI but not paid for; second, GE claims $8,728,977 for items allegedly manufactured for IACI but sold by GE to other customers in the ordinary course of business ("lost volume seller damages"); third, GE claims $2,532,743 for items sold at a discount; fourth, GE claims $311,560 in damages for items not resold; and fifth, GE claims $64,145 in incidental damages. GE also contends that if less than the full amount claimed is awarded it is entitled to reimbursement of certain unearned credit rebates and discounts under the Distribution Agreement. GE acknowledges that $4,171,462 in unapplied advance payments should be offset against any damage award. The remainder of this section will separately consider each category of damages claimed.

(1) Items delivered to IACI but not paid for

46. In this element of its claim, GE seeks $3,209,326 representing the value of items sent by GE to IACI pursuant to purchase orders under the Distribution Agreement but for which IACI has not paid. GE subdivides this claim into two parts: $3,196,592 for items shipped under Orders Nos. 012977, 01299, 01298 and 11707, each of which had a separate letter of credit, and $12,734 for items supplied pursuant to smaller orders covered by the blanket letter of credit.

47. In support of this claim, GE submits summaries of the unpaid receivables backed up by invoices and shipping

documents. Moreover, Peat Marwick, Mitchell & Co. of Cincinnati, Ohio, independent public accountants who regularly audited GE's financial statements ("the independent auditor"), attest to the accuracy of GE's figures after examining the underlying business records and documentation. Mr. Phillip Present of that firm, who gave evidence at the Hearing, stated that as the partner in charge of the review, he was able to confirm the accuracy of GE's calculations.

48. The only specific objection raised by IACI on this element of the claim concerns Draft No. 39148. That draft, in the amount of $104,753.51, was for various invoices relating to Order No. 01297. In September 1978, GE requested Manufacturers Hanover to make payment for this draft under the letter of credit against noncomplying documents. On 28 September, Manufacturers Hanover requested authorization from Bank Markazi to make this payment to GE. It is not disputed that authorization was received by Manufacturers Hanover on 28 October 1978. The Parties do, however, contest the amount of the authorization -- the Claimant contends that the authorization was only for $90,607,43, leaving a balance of $14,141;[3] the Respondent asserts that full payment was made. GE claims $14,141 for the alleged short payment.

49. In support of its contention that full payment was made, IACI relies on contemporaneously-prepared records of Bank Markazi making reference to this transaction and authorizing the purchase of foreign exchange to pay the draft in full. Moreover, the Respondents point out that the Claimants have submitted a copy of the IACI authorization to Bank Markazi to make payment in full. Although the Claimants also present contemporaneously-prepared internal

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[3]For the sake of convenience, the Tribunal has adjusted $14,140.98 to $14,141.

GE telexes concerning that alleged short payment, the only statement by Manufacturers Hanover in this respect was not contemparaneously prepared, but rather was prepared in connection with this arbitration. Further, although that statement by Manufacturers Hanover refers specifically to the alleged 28 October 1978 Bank Markazi authorization only permitting partial payment, that document has not been placed in the record, nor has the Claimant adequately explained the failure to present it. The Tribunal therefore reduces the claim by $14,141. The Tribunal concludes, therefore, that GE is entitled to recover $3,195,185 for the unpaid invoices.

50. In determining the date from which interest should run, the Respondents point to the fact that the Claimant's banks refused to make certain payments in November and December 1978 due to discrepancies in the documentation, and that as late as 23 February 1979 these discrepancies had not been cleared up. Morover, the Respondents contend that force majeure conditions in Iran precluded the payment of the amounts due in this Case.

51. With respect to the Respondents' force majeure defense, the Tribunal has taken the position previously that "[t]he invocation of force majeure as an excuse for failure to perform under a contract must always be analyzed in the context of the circumstances causing the force majeure, taking into account the particular party affected by those circumstances and the specific obligations that party is prevented from performing." Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 15-16 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 309 (citations omitted) ("Sylvania"). Moreover, "[f]orce majeure being an exception to the obligation to perform, a party that invokes it has the burden of proving that conditions of force majeure existed with regard to its various contractual obligations." Id. at

p. 20, reprinted in 8 Iran-U.S. C.T.R. at 312. On the specific issue of whether force majeure caused by the revolution affected banking operations, the Tribunal has held previously that force majeure conditions disrupted banking operations in February 1979. See id. at p. 15, reprinted in 8 Iran-U.S. C.T.R. at 309. In this Case, the Claimant has acknowledged that force majeure conditions may have precluded the Respondents from making payments in February 1979, but that such conditions no longer prevented bank transfers at least as of late March 1979.

52. The invoices at issue in this part of the Claim relate to goods delivered and invoiced in November and December 1978. However, as late as 23 February 1979, IACI raised certain questions concerning the documentation presented by the Claimant for payment under the letters of credit. Moreover, as discussed previously, the first clear notice from GE that it considered IACI to be in breach of its payment obligations came only on 19 March 1979. Therefore, giving the Respondent sufficient time to make the necessary payments, and considering the other circumstances of this Case, the Tribunal grants interest on the amount awarded beginning on 1 May 1979.

(2) Damages for Products Resold to Other Customers in the Ordinary Course of Business

53. The Claimant argues that it is entitled to damages for lost profits ($6,057,272) and unrecovered overhead ($2,671,705) on the theory that it is a lost volume seller. The Claimant alleges that it resold $14,053,995 in items manufactured for IACI to its other customers in the ordinary course of business. The Claimant contends that it had the production capacity to manufacture both the IACI products and those resold to other customers and, therefore, its total sales volume was reduced by IACI's breach of contract.

54. The theory underlying this claim is that GE is entitled to recover damages as a "lost volume seller" under the Uniform Commercial Code § 2-708, which forms part of the laws of New York applicable to this Agreement. According to GE, this theory of recovery is also consistent with general principles of contract damages in international law. Under this theory, a seller that can establish that it had sufficient production capacity to supply not only the defaulting purchaser but also the customers to whom the goods were resold is deemed to have suffered a reduction in its total volume of sales and can recover the profit and overhead it would have expected to earn on the lost sales if the breach had not occurred.

55. The Parties disagree as to the applicability of this theory of recovery. In the circumstances of this Case, however, the Tribunal need not decide whether lost volume seller damages are awardable in principle[4] because the proof submitted in support of this Claim is inadequate. The Claim is therefore denied.

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[4]The Tribunal further notes that the Distribution Agreement contains a provision that would exclude the payment of lost profits upon the "termination, expiration or non-renewal" of the Agreement. While not precisely applicable to the circumstances of this Case, this provision offers a clear indication of the Parties' underlying reluctance to contemplate the payment of damages such as these. Article 15 (C) of the Agreement states as follows:

> Neither the Company nor the Distributor shall be liable by reason of the termination, expiration, or non-renewal of this Agreement to the other for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, losses or commitments in connection with the business or good will of the Company or the Distributor or otherwise.

This provision would also argue against the payment of lost profits in this Case.

(3) Damages for Products Resold at a Discount

56. Beginning in May 1979, the Claimant sold certain of the products manufactured for IACI at substantial discounts. These items consisted mainly of spare parts, accessory parts and maintenance tools that were useful only to those military forces that had overhaul and repair facilities similar to IACI's. The Claimant states that in 1979 these countries were limited to the United States, Israel, Spain, Germany, Korea and Greece.

57. GE alleges that after it was unsuccessful in selling these items in the ordinary course of business it began to market them at substantial discounts. GE claims that during the period from May 1979 until January 1982[5] it sold products with an IACI purchase price (after discounts) of $3,074,981 for only $542,238, incurring a loss of $2,532,743. Of this amount, $373,634 is attributable to losses on items sold to foreign governments, and $2,159,109 to losses on items sold to surplus dealers.

58. As an initial matter, the Respondents question whether the discounted sales were justified given the balance remaining from advance payments. As previously discussed, however, the Tribunal finds that GE was authorized under the circumstances to mitigate its damages in this manner. See supra para. 43. The Respondents also

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[5]The Tribunal notes that although the amount of these losses could not be quantified until the mitigation was completed in January 1982, the claim for such damages arose when GE ceased performance in May 1979 and started the process of selling the items. Moreover, the only effect of the Claimant's act in selling the products in January 1982 was to reduce the amount owed by the Respondents for such costs. The Tribunal therefore takes jurisdiction over the entire claim.

contest the sufficiency of the proof supporting this element of the damages. The Respondents question the factual accuracy of whether the items were ever produced for IACI and, if so, whether the alleged sales took place at such discounted prices.

59. GE has presented evidence establishing that the items in question were spare parts, accessories, and maintenance tools ordered by IACI under the two major purchase orders. In addition, it has produced documents showing that the items in question were resold from May 1979 to January 1982 to the small number of foreign governments with compatible overhaul facilities. GE presents summaries of all resales at a discount that make reference to the IACI purchase order, part number, quantity resold, IACI net unit price and the resale price. Moreover, the independent auditor examined the summaries and stated that "[i]n [its] opinion, [the] Claimant's Exhibit[s] . . . present fairly the items, and the quantities thereof, ordered by IACI under the Distribution Agreement but . . . sold to third parties at a discount and the differences between the IACI contract price and the prices paid to GE by third parties for such items." The Claimant also states in its pleadings that the back-up "documents will be made available on request."

60. The Tribunal finds this evidence sufficient to establish GE's claim for $2,532,743. The Tribunal awards interest from 11 December 1981, the latest date on which GE attempted to deliver goods to IACI through GETSCO. See infra para. 62.

(4) Damages for Unsold Items

61. The Claimant seeks $311,560 in damages for items that it failed to sell. This amount includes $293,572 for items still in GE's possession and $17,988 for tools that it scrapped in lieu of incurring further storage costs.

62. On 7 December 1981, the Claimant collected all of the remaining unsold IACI aircraft engine parts on hand at GE and sent them for possible shipment before 11 December 1981 to the General Electric Supply Company storage facilities in Philadelphia, Pennsylvania. The items were never shipped and they remain in storage there. The Tribunal considers that, under the terms of the Distribution Agreement, IACI remains responsible to pay GE for the items manufactured for IACI that GE was unable to resell as part of its mitigation efforts.

63. In support of this element of the claim, GE presents a schedule of the items in storage and the independent auditor confirms that the schedule "present[s] fairly the items . . . stored . . . by GE." Moreover, GE presents a letter evidencing the transfer by GE to the General Electric Supply Company and proof that the items were properly inventoried in 1986. The Respondent has failed to rebut this evidence. The Tribunal therefore finds that GE is entitled to $293,572 for these items. The Tribunal finds it appropriate to award interest on this amount from 11 December 1981, the latest date that GE attempted to deliver the goods to IACI. See supra para. 62.

64. The next issue is what should be done with the IACI products in storage. The Claimant suggests that the items be transferred to a freight forwarding agent appointed by IACI in the United States. The Respondent argues that this is not sufficient and that the Claimant should be required to actually transfer the items to Iran. However, the terms of the Distribution Agreement only require GE to deliver the goods to IACI "F.O.R. or F.O.T." at its plant in the United States or at the most to deliver these goods to Behring as required by the letters of credit. The Tribunal therefore finds that GE is responsible only to transfer the items to IACI's freight forwarder in the United States and

to give IACI necessary assistance in applying for the government approvals necessary for transfer.

65. Some of the items ordered by IACI but not delivered by the date of the suspension were special aircraft ground equipment tools. These tools are used to overhaul aircraft engines and generally are purchased only at the time an overhaul and repair facility is established. The Claimant contends that, after making several attempts to sell the tools, it scrapped them in late 1982 to avoid incurring further storage costs. The Claimant alleges that by this date the parts at issue were obsolete. GE did not put IACI on notice that it was scrapping the tools.

66. The Tribunal has held that as a general matter the Claimant's efforts to mitigate its damages were reasonable. See supra para. 43. In this instance, however, the Tribunal considers that before GE took the drastic measure of scrapping the tools, it should have attempted to place IACI on notice that it was intending to do so. In view of this lack of notice, the Tribunal denies the claim for the value of the scrapped tools.

(5) Incidental Damages

67. As incidental damages arising directly from the suspension of shipments, the Claimant argues that it is entitled to be reimbursed $61,559[6] in storage costs and $2,586 in inventory taxes arising from its storage of unshipped IACI items. To the extent proven, the Tribunal considers these to be appropriate damages arising directly from the suspension and eventual discontinuation of the purchase orders.

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[6]At the Hearing, Claimant's Counsel alleged that these
(Footnote Continued)

68. In support of its storage costs, the Claimant places in evidence a chart indicating the cost of its various storage facilities during the relevant time period, together with affidavit testimony from its financial officer confirming the chart's accuracy. Similar evidence was presented in support of the claim for inventory taxes. Moreover, GE presents statements from its financial department that it paid the inventory taxes in issue. On the basis of the foregoing, the Tribunal grants the amount claimed.

69. Although the Claimant alleges that it incurred inventory taxes from 1979 through 1981, it actually paid those taxes in 1980 through 1982. The Tribunal therefore finds it reasonable to award interest on $2,586 from the approximate median date of 1 September 1981. Moreover, the Claimant claims storage costs incurred from 1979 through 1986. The Tribunal therefore finds it reasonable to award interest on $61,559 from the approximate median date of 1 January 1983.

(6) Unearned Discounts and Credit Rebates

70. Based on the foregoing, the Tribunal has determined that the Claimant is entitled to $6,085,645 for its Distribution Agreement claim. As this is substantially less than the amount claimed, the Tribunal must address the Claimant's further contention that, in light of this refusal to grant the claim in full, GE is entitled to damages equaling the amount of unearned discounts and credit rebates under the Distribution Agreement.

(Footnote Continued)
costs were actually $64,845 through 1988. The Tribunal dismisses the claim for damages incurred between 1986-88 for lack of proof.

71. The contract provisions relevant to the determination of this issue are found in Amendment No. 1 to the Distribution Agreement. That Amendment provided for quantity discounts "for individual orders placed" based on the "individual order value" and for credit rebates based on the "cumulative value of orders received in any one contract year." (Emphasis added.) The Claimant argues that because the orders at issue in this Case were not fully completed it should receive the difference between the rebates and discounts earned on the items actually delivered to IACI, and those rebates and discounts applied at the time the purchase orders were placed. The Tribunal disagrees. The language of the Agreement provides that the discounts and rebates applied to the monetary amount of the orders on the dates they were received by GE -- the Agreement makes no provision for the adjustment of those discounts and rebates. The Tribunal must therefore deny the claim for unearned credit rebates and discounts.

(7) Unapplied Advance Payments

72. Both Parties to this arbitration acknowledge that certain advance payments should be offset against the amounts awarded for the Distribution Agreement claim. The Claimant originally contended that the proper amount of such unapplied advance payments was $4,163,642, but after review of the Respondent's pleadings in this respect acknowledges that an additional $7,820 should be offset against the amount awarded. This results in a total adjustment of $4,171,462. The Respondents, on the other hand, allege that the proper amount of such unapplied advance payments is higher -- approximately $5.5 million.

73. The Claimant's 19 March 1979 telex to IACI putting the Agreement in suspension states that "GE has advance payments $4,141 representing 25% of the $16,569 unfilled orders. This funding has been collected and is covered by

advance payment bank guarantees." This statement was not contested by IACI at the time, and, as such, it must be the starting point of this Tribunal's analysis of the amounts due for the unapplied advance payments.

74. The Claimant in its pleadings explains that the difference between the $5,578,470 argued by the Respondent to represent the remaining advance payments and the $4,171,462 proposed by the Claimant is explained by three basic errors in the Respondent's calculations. First, the Respondents failed to take into account a refund of $349,214.46 in advance payments transferred to IACI in 1978 when it was decided to treat Purchase Orders No. 01297 and No. 01299 as one order for the purpose of calculating the order value discounts. Second, the Respondents made a small error in calculating the amounts actually paid by IACI under the Agreement. Last, and most important, the Respondents failed to reduce the advance payment balance by $1,057,945.90, representing the advance payment allocable to items delivered to IACI but not paid for at the date of the suspension. After these adjustments are made, the Parties essentially agree as to the proper amount of the unapplied advance payments.

75. In support of this detailed explanation of these discrepancies, the Claimant presents testimony from its financial officer, supported by back-up documents and confirmed by the independent auditor. Respondents did not contest these figures at the Hearing. The Tribunal finds the Claimant's arguments in this respect convincing and will offset $4,171,462 in applied advance payments against the amounts awarded on the claim. This amount was available to the Claimant at least by 19 March 1979, and the Tribunal therefore awards the Respondent interest beginning on this date. See supra para. 73.

(8) Declaratory Relief

76. The Claimant also seeks declaratory relief from the Tribunal absolving it from all liability with respect to the letters of credit and bank guarantees relating to the Distribution Agreement. With respect to the letters of credit, Claimant seeks an order from the Tribunal instructing the Government of Iran, IACI, and Bank Markazi to notify Manufacturers Hanover and Irving Trust Company that they approve all payments made to GE under the operative letters of credit and that GE should be released from all liability under those letters of credit. Concerning the bank guarantees, GE seeks a declaration from the Tribunal that all bank guarantees given by GE to secure payment under the letters of credit are null and void and an order instructing the Government of Iran, IACI and Bank Markazi to refrain from asserting any "claim or demand thereunder or relating thereto."

77. Under the terms of the Distribution Agreement, IACI was required to pay GE in United States dollars through letters of credit issued or confirmed by a New York bank. Separate letters of credit were required for all orders above $100,000 and a blanket letter of credit covered orders below that amount. On all orders greater than $100,000, GE could draw immediately from the letter of credit an advance payment equal to 25 percent of the order's value upon presentation of an unconditional bank guarantee in IACI's favor.

78. In accordance with these terms, IACI opened nine letters of credit with Bank Markazi for orders over $100,000 and a blanket letter of credit to cover all orders below that amount. Bank Markazi, acting on IACI's behalf, opened ten corresponding letters of credit with banks located in the United States. For the nine letters of credit relating to orders over $100,000, GE drew 25 percent of the order value as an advance payment and entered into separate bank

guarantees in IACI's favor to ensure proper performance of each individual purchase order. In addition, to obtain payments against stale documents, GE entered into twelve indemnity agreements with Manufacturers Hanover and Irving Trust totaling $3,367,060. Bank Markazi has never approved these payments, and the indemnity agreements remain outstanding.

79. The Distribution Agreement expired by its terms on 20 March 1979, and IACI has been credited in this Award with the remaining balance of all advance payments relating to that Agreement. Consequently, both the letters of credit and bank guarantees have no further purpose. The Tribunal therefore decides that IACI is obligated to withdraw any demands for payment under the bank guarantees and letters of credit relating to performance of this Agreement, not to make any further demands thereunder, and to take all reasonable steps to ensure that they are released. The Tribunal further decides that the indemnity agreements entered into by GE to obtain payment under the letters of credit relating to this Agreement have no further purpose and that IACI should take all reasonable steps to ensure that GE is released from these indemnities.

4. Counterclaims

80. IACI raises two counterclaims based on the Distribution Agreement.[7] First, IACI argues that it is entitled to reimbursement of $5,578,470 in unapplied advance payments. Second, IACI argues that it is entitled to $2,369.34 because it paid certain invoices in full when it should have applied discounts. The Claimant acknowledges both "counterclaims," although it disputes the amount of the unapplied

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[7] IACI's third counterclaim for $8.5 million in damages arising out of GE's alleged breach of the Distribution Agreement has been rejected as late filed. See supra para. 10.

advance payments, and has taken both the discounts and advance payments, as it calculates them, into account in calculating the value of the claim. The Tribunal has also taken both the discounts and advance payments into consideration in valuing the claim and need not consider them further. See supra paras. 72-75.

B. Repair Contract

1. Factual Background

81. In addition to the Distribution Agreement, beginning in May 1976, GE performed certain engine repair work for IACI. Neither Party to this arbitration has produced a copy of a signed agreement governing this repair work, and the Parties differ concerning the terms under which that work was performed. Although IACI contended in its Statement of Defense that the work was performed pursuant to a "Basic Order Agreement" entered into between the Parties, in its later pleadings IACI stated that these repairs were performed pursuant to the practice of the Parties.

82. In practice, IACI would initiate the repair process by sending a part to GE for repair, together with a purchase order and technical documents describing the necessary repairs. GE would accept the order either by separate letter or simply by signing the purchase order. GE's repair department would then inspect the part and, if repair was not possible or if the anticipated cost of the repair was greater than 65% of the replacement cost of the part, GE would so inform IACI. Unless IACI requested otherwise, GE would then scrap the part and bill IACI only for the cost of the inspection. In all other cases, GE would repair the part and, after it passed inspection, place an "Air Serviceable" tag on the part. This tag indicated that the part met the requirements for air-worthiness established by the United States Military. The repaired

parts were then packaged and delivered to Behring for forwarding to IACI. After the part was delivered to Behring, GE would invoice IACI. Each month GE would prepare a monthly receivables report describing the status of the IACI account.

83. These procedures were followed successfully until late 1978 when IACI fell behind in its payments. Moreover, in February 1979 GE became aware that Behring would no longer act as IACI's freight forwarder. GE ceased shipments of repaired parts to IACI beginning in February 1979 and, as previously discussed, on 19 March 1979 GE placed IACI on notice that all shipments were "on hold" until the financial and transportation problems were solved. On 18 April 1979, representatives of the Parties spoke on the telephone, and the IACI representative stated that he was processing an authorization request to pay the outstanding repair invoices ("offload bills") and that he anticipated payment to occur in April 1979. In fact, IACI did pay $28,400 towards the invoices in May 1979 and made two smaller payments later in the year, but the Claimant contends that $110,485 remains due and owing for the repair invoices. IACI acknowledges that certain invoices remain unpaid but contends that the amount owed is much lower -- $67,796.27.

2. Claims

84. GE argues that it is entitled to three categories of damages for this claim: first, $110,485 due but unpaid under 101 repair invoices; second, $50,567 representing the uninvoiced cost of inspection and repair of the 45 IACI items which remain in GE's possession; and, last, $5,475 for the storage of those 45 IACI items. The Tribunal will consider separately each element of the damages claimed.

a. Invoiced Amounts

85. In support of its invoice claim, GE presents copies of the 101 invoices at issue establishing that the repaired parts were packed and delivered to Behring. These invoices were sent to IACI between December 1977 and August 1979, and IACI did not object to the invoices at that time. Moreover, in conversations between the Parties after the suspension of deliveries in March 1979, IACI representatives acknowledged that certain amounts were owing under the repair invoices. Although IACI would calculate the amount due in a slightly different manner, IACI has acknowledged in these proceedings that it owes GE $67,796.27 for the repair invoices. Thus, the only issue for the Tribunal to decide is the amount actually due under the invoices.

86. One basic dispute between the Parties concerns the items delivered by GE to Behring but apparently not forwarded to IACI. The Respondent states that, in addition to the $67,796.27 "Ready for Payment," items totaling $31,673.11 in value are "Held by Behring." Under GE's Terms and Conditions of Sale, "Seller shall deliver the repaired or overhauled products to Buyer 'FOB domestic transportation at Seller's plant or plants' . . . whereupon Buyer shall assume all risk of loss or damage." IACI takes the position that although GE's Terms and Conditions of Sale should not govern, according to the practice developed between the parties in this respect, GE was obligated to deliver the repaired items to Behring, IACI's freight forwarder in the United States. The Tribunal must, therefore, assume that GE fulfilled its obligation under the purchase orders when it delivered repaired parts to Behring; therefore, all items "held by Behring" must be considered to have been delivered to IACI. Based on this reasoning, the Respondent has admitted $99,469.38 of the claim, leaving in dispute only $11,015.62.

87. The Respondents raise two arguments concerning the remaining disputed amounts. Their primary defense is that invoices totaling $10,431.99 relate to 12 repaired items never returned to IACI. The Claimant contends that these items actually fall in two categories: first, as was the practice of the Parties, eight of the items were scrapped after inspection either because they were not repairable or because the cost of repair was not justified; and, second, four of the items were delivered to Behring in the ordinary course of business in February 1978, October 1978, and January 1979. The Respondent's second more limited argument is that adjustments in the aggregate amount of $631.09 should be made for certain allegedly erroneous charges and overpayments made with respect to the invoices.

88. Concerning both of the Respondent's defenses, the Tribunal notes that IACI did not object to the repair invoices at the time they were received or, in fact, at any time before these proceedings. The Tribunal has often looked to the lack of contemporaneous objection as evidence that invoiced goods or services were received. See, e.g., Rockwell International Systems, Inc., and Government of the Islamic Republic of Iran (The Ministry of National Defence), Award No. 438-430-1 (5 Sept. 1989), reprinted in ____ Iran-U.S. C.T.R. _____, _____. In line with this practice, the Tribunal grants the claim for $110,485. The Tribunal further considers that these invoices should have been paid by 1 May 1979 at the latest and grants interest from that date. See supra para. 52.

b. Uninvoiced Repair Costs

89. The Claimant also argues that it is entitled to $50,567 for the uninvoiced inspection and repair cost of the 45 IACI items that remain in GE's possession. IACI contests its liability and alleges that GE actually retains 89 items rather than the 45 admitted by GE.

90. As previously discussed, GE suspended shipments of repaired parts to IACI in February 1979 as the result of IACI's failure to pay past due invoices. GE formally notified IACI of the suspension on 19 March 1979. Article III(c) of GE's Terms and Conditions of Sale authorized GE to suspend shipments if IACI failed to meet its payment obligations: "If Buyer fails to fulfill any condition of this 'Payment' Article, Seller may suspend performance and any expenses incurred by Seller in connection therewith shall be payable by Buyer." The evidence establishes that on the date of the suspension IACI was indeed in default in its payment obligations and furthermore that by this date GE had completed the requested repairs. An internal GE memorandum of 28 February 1979 concerning the repair items stated "[a]ll Iranian material has been completed and is on hold awaiting instructions." A list attached to that memorandum establishes that GE was then holding 44 repaired parts, one unrepaired part, and one unrepaired engine. On 9 April 1979, GE sent a telex to IACI describing specifically the items in its possession. IACI did not object to this telex. In July 1979, in response to urgent requests from IACI, GE delivered one of the repaired parts to IACI, an anti-icing valve, leaving 43 repaired parts, one unrepaired part, and one unrepaired engine, in GE's possession.

91. In support of the fact that the items were actually repaired, GE presents copies of "Air Serviceable" tags for the 43 repaired parts. Thirty-seven of these tags are dated in late 1978 and early 1979; six of them are not dated until 15 July 1986. The Claimant has explained that these six parts were also repaired in 1978 and 1979 but the original air serviceable tags were lost when GE unpacked the parts in preparation to submit this claim. GE then had the parts reinspected on 15 July 1986, and they were again found to be airworthy; hence, this date is on the tags. In support of the amount claimed for the repair work, GE presents a summary of the repair and inspection charges for

the 43 repaired parts, one unrepaired part, and the unrepaired engine. This summary is supported by the uncontraverted Peat Marwick report. The Tribunal finds the evidence sufficient to establish that the repair work was completed as alleged and that the value of that work is $50,567.

92. The Respondents primary defense to the claim is that its failure to receive invoices for the work when it was performed in 1978 and 1979 relieves it of any obligation to pay for the work. The Claimant acknowledges that it did not send invoices but explains that it was the practice of the Parties that invoices would only be sent after the goods were shipped. Therefore, after the suspension of shipments in February 1979, no further invoices were sent to IACI. This suspension of shipments was the direct result of IACI's lack of payment. Accordingly, the Tribunal grants the claim in the amount of $50,567 plus interest from 18 January 1982, the date that Statement of Claim was filed. In the circumstances of this Case, given the Claimant's failure to invoice IACI, this was the first opportunity the Respondent had to meet its contractual obligation to make payment.

93. This raises the issue of what GE should do with the 44 IACI parts and the engine that remain in its possession. GE has offered to transfer the items to a forwarding agent appointed by IACI in the United States, and it has obtained a license from the United States Treasury permitting transfer to IACI in care of Victory Van Lines at that company's warehouse in Sterling, Virginia. At the Hearing, the Claimant explained that this license had been extended to permit delivery to Iran in the United States. The license requires IACI or Iran to seek approval for further transfer arrangements from the United States Department of the Treasury. The license was valid until 31 May 1988. The Tribunal finds that transfer by GE to Victory Van Lines in the United States would be sufficient to meet

the requirements of the contract and that the responsibility to obtain a license for the transfer lies with IACI. See supra para. 64.

c. Storage and Maintenance Costs

94. GE claims $5,475 representing the cost of storage and maintenance of these 45 items from 1979 until 1986.[8] In support of this claim, GE presents a chart and documents evidencing $2,943 representing the cost of special storage and maintenance of the T-58 engine, and $2,532 for storage of the remaining 44 IACI parts. In addition, GE presents a detailed memorandum explaining the cost of preserving and storing the engine.

95. The Tribunal considers storage and maintenance costs to be properly payable and the amount claimed is adequately proven. The Tribunal therefore grants the amount claimed of $5,475. GE incurred these expenses from 1979 through 1986, and the Tribunal considers it appropriate to grant interest from the approximate median date of 1 January 1983.

3. Counterclaim

96. IACI counterclaims for the return of the 89 repair items which it alleges still to be in GE's possession, plus damages arising from GE's retention of those parts. Although the Tribunal agrees with IACI that, subject to obtaining necessary government approvals, it is entitled to the return of the items in GE's possession (and GE has offered to deliver those items to an IACI representative in

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[8]At the Hearing, Claimants Counsel contended that the damages incurred to the date of the Hearing were $7,235. The claim relating to 1986-88 is denied for lack of proof.

the United States), the evidence supports a finding that only 44 parts and one engine remain in GE's possession, rather than the 89 items claimed by IACI.

97. The Claimant has submitted a contemporaneously-prepared list of the 46 items in its possession on 28 February 1979 and a copy of a telex to IACI on 9 April 1979 describing these 46 items. IACI did not object to this telex at the time. Moreover, the record establishes that in July 1979 one additional part, an anti-icing valve, was transferred to IACI reducing the items in GE's possession to 45. The Respondent has not submitted evidence sufficient to establish that these contemporaneously-prepared documents are incorrect. Moreover, concerning IACI's request for damages, the Tribunal has held that GE's suspension of shipments and termination of the Agreement was justified by IACI's failure to make payments and that IACI accordingly is responsible to pay appropriate damages arising from the suspension and termination. This counterclaim is therefore denied.

C. Service Representatives Contract

98. The Claimant's third and fourth claims arise out of a Service Representatives Contract (the "Contract"). GE claims $248,435 in unpaid fees under this Contract and $107,654 representing the cost of evacuating the service representatives from Iran.

1. Factual Background

99. In April 1976, IACI entered into a Contract with GETSCO pursuant to which GETSCO agreed to provide certain technical services to assist IACI in developing its overhaul and repair facility. GETSCO is a wholly-owned subsidiary of GE established in 1961 to provide technical assistance to GE's customers.

100. The technical services provided under this Contract consisted of: (1) monitoring IACI's overhaul program for J79 and J85 jet engines; (2) providing IACI with advice and assistance in the evaluation, repair and testing of such engines and in the planning of the overhaul facility; (3) providing IACI with advice and support in planning and executing engineering changes in the engines; and (4) providing IACI's staff with informal training in these areas.

101. The initial team of service representatives was five persons for a 42-month period. The Contract was later modified, however, to include a logistics service representative at no additional cost to IACI and a test equipment engineer for which IACI was charged. The Contract was also extended several times and finally was due to expire on 20 March 1979. On 6 November 1978, the Parties entered into Amendment No. 6 of the Contract which provided that beginning at various dates in 1978 the "man year rate" for each of the six paid representatives would be increased retroactively from $88,300 to $97,000 per representative.

102. The Contract was successfully implemented from 1976 through 1978. Indeed, the Contract was extended by agreement between the Parties to 20 March 1979. The evidence establishes that each month IACI approved and signed GETSCO's monthly time sheets, which were then sent to Ohio where invoices were prepared on that basis. The invoices covering the period up to March 1978 were paid, but those submitted for April through October, though never protested, remain unpaid. Moreover, GETSCO's Senior Service Representative in Iran was Mr. MacCracken, and he has presented uncontroverted affidavit testimony that the GETSCO service representatives in Iran fully carried out their responsibilities under the Contract through the end of November 1978, except for six days in November when the plant was either closed or travel was impossible.

103. All GETSCO service representatives were evacuated from Iran in December 1978 and January 1979 due to the then-prevailing revolutionary conditions. On 10 March 1979, an Iranian GE representative remaining in Iran contacted IACI and reported to GE that he had "asked them whether you should come back but they told me that there is nothing you can do for the moment. They will let us know when it will be necessary for you to be here." IACI never requested additional services, however, and the Contract expired by its terms on 20 March 1979. On 20 December 1980, GETSCO assigned to GE all of its claims against IACI arising out of the Contract.

2. Claim for Services

104. GE claims $248,435 representing fees due for services rendered under this Contract. This claim includes (1) $216,837 due under invoices for services rendered between April 1978 and October 1978; and (2) $31,598 due for uninvoiced services allegedly rendered during November 1978.

a. Unpaid Invoices

105. GE claims $216,837 due under the 14 invoices submitted to IACI for services rendered by GETSCO between April and October 1978. For the most part, this claim is not contested. IACI does contend that the invoice for Mr. Clark's services for the month of April 1978 (Farvardin) was incorrectly calculated and therefore the claim should be reduced by $98.85.

106. The evidence establishes that an invoice for Mr. Clark's services in the amount of $7,122.72 for April 1978 was sent to IACI. IACI paid $7,023.87 towards this invoice on 6 September 1978, leaving a balance of $98.85. When making this payment in September, IACI questioned the rate applied to Mr. Clark's services for the three days between

17 and 20 April. On 6 November 1978, however, IACI officially agreed to increase Mr. Clark's salary as of 17 April 1978 and a revised invoice reflecting this adjustment was sent to IACI. IACI did not contest this revised invoice. The Tribunal therefore grants the full amount claimed of $216,837. In line with its previous findings, the Tribunal considers that this amount should have been paid at the latest by 1 May 1979 and awards interest from that date. See supra para. 52.

b. Uninvoiced Amounts

107. In addition to the amounts claimed under these invoices, the Claimant seeks $31,598 allegedly representing amounts due for services rendered by GETSCO representatives in November 1978. These services were never invoiced to IACI.

108. In support of this claim, GE presents an affidavit from Mr. MacCracken confirming that the services were performed and a chart indicating the contract price for the services. Mr. MacCracken explains further that although time sheets relating to these services normally would have been submitted to IACI for approval, no time sheets were prepared for the month of November 1978 as a result of the situation then prevailing in Iran. Because of the lack of time sheets, the Claimant explains that no invoices were submitted to IACI.

109. In the numerous communications between the Parties after the service representatives left Iran, including a telex sent to IACI on 26 October 1979 requesting payment for services rendered under the Contract, the Claimant failed to mention that it considered any payment due for services rendered in November 1978. In these circumstances, the Tribunal finds the proof submitted insufficient to support the claim and it is denied.

3. Claim for Evacuation Costs

110. GE claims $107,654 representing the cost of evacuating its service representatives from Iran. GE bases its Claim on Article VIII of the Contract which provides in relevant part that "in the event IACI elects to terminate this Contract . . . for its own convenience, all relocation costs incurred by Seller associated with the termination . . . shall be recoverable costs."[9] This was an exception from the general contract provision making GETSCO responsible for all of the representatives' transportation costs. Therefore, before IACI can be held liable for these expenses, the Tribunal must find that IACI terminated the Contract for its own convenience.

111. The GETSCO service representatives were evacuated from Iran in late 1978 and early 1979 out of concern for their personal safety. Force majeure conditions prevailing in Iran, and in particular at the IACI overhaul facility, made it impossible for those employees to return and resume work before the Contract expired on 20 March 1979. The Tribunal therefore considers that the Contract was suspended as the result of force majeure between November 1978 and 20 March 1979 and then expired by its terms. In such a case, in which IACI did not terminate the Contract for its own convenience, the Contract placed the burden on GE to pay relocation costs. The Tribunal therefore denies the claim.

4. Counterclaims

112. Two Counterclaims are raised based on the Service Representatives Contract. First, the Government of Iran

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[9] Although in its early pleadings GE characterized this as an expulsion claim, this argument was not pursued in its later pleadings, nor has GE pleaded facts supporting an expulsion claim.

raises a counterclaim for 34,309,021 rials plus penalties based on GETSCO's alleged failure to pay taxes due under the Contract. Second, IACI raises a counterclaim for $812,746.52 based on GETSCO's alleged failure to meet its social insurance obligations under the Contract. GE argues that the Tribunal does not have jurisdiction over the claims and disputes their merits.

a. Jurisdiction

113. In its prior jurisprudence, the Tribunal has developed precedents to guide it in determining whether it has jurisdiction to decide social insurance and tax claims. These decisions turn on the question whether the claim arises out of Iranian law or whether the claim arises out of contract. The Tribunal generally has held that social insurance and tax claims arise out of Iranian law, and it therefore lacks jurisdiction over them.[10] The Tribunal also has declined to exercise jurisdiction over requests for findings that a contracting party has fulfilled its obligations under Iranian social insurance or tax law.[11]

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[10] See, e.g., Agrostruct International, Inc. and Iran State Cereals Organization, et al., Award No. 358-195-1, para. 54 (15 Apr. 1988), reprinted in 18 Iran-U.S. C.T.R. 180, 197; Arthur Young & Company and Islamic Republic of Iran, et al., Award No. 338-484-1, para. 76 (1 Dec. 1987), reprinted in 17 Iran-U.S. C.T.R. 245, 263 ("Arthur Young"); Harris, Award No. 323-409-1 at para. 176, reprinted in 17 Iran-U.S. C.T.R. at 83; Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, pp. 38-40 (25 Sept. 1985), reprinted in 9 Iran-U.S. C.T.R. 107, 135-36; Sylvania, Award No. 180-64-1 at pp. 40-41, reprinted in 8 Iran-U.S C.T.R. at 326-27; T.C.S.B., Inc. and Islamic Republic of Iran, Award No. 114-140-2, pp. 23-24 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 160, 173.

[11] See Arthur Young, Award No. 338-484-1 at paras. 77-79, reprinted in 17 Iran-U.S. C.T.R. at 263-64.

114. The Tribunal does have jurisdiction, however, over a claim relating to social insurance premiums or taxes that arises not solely from municipal law, but from a contractual provision.[12] In such cases, the Tribunal reasons that its competence derives from the provision of the Claims Settlement Declaration authorizing it to decide claims that "arise out of contracts."[13] A typical example of a claim relating to social insurance premiums that the Tribunal recognizes as arising from a contractual provision -- and thus falling within its jurisdiction -- is where an Iranian contracting party withholds part of the contract price until the United States party proves that it discharged its social insurance or tax obligations under the contract.

115. Applying this legal standard to the particular facts of this Case, the Tribunal addresses the jurisdictional issues arising out of the two counterclaims separately. First, the Government of Iran, who is not even a party to the Contract, raises a counterclaim based on GETSCO's alleged failure to meet certain of its tax obligations to that Government arising out of work performed under

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[12] See, e.g., TME International Inc. and Government of the Islamic Republic of Iran et al., Award No. 473-357-1, para. 98 (12 Mar. 1990), reprinted in ___ Iran-U.S. C.T.R. ____, ____; Houston Contracting Company and National Iranian Oil Company, et al., Award No. 378-173-3, paras. 82-87 (22 July 1988), reprinted in 20 Iran-U.S. C.T.R. 3, 27-29; Training Systems Corporation and Bank Tejarat, et al., Award No. 283-448-1, paras. 41-44 (19 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 331, 341-42; see also Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, pp. 14-16 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 227-28.

[13] The Claims Settlement Declaration, Art. II, para. 1 provides that "[a]n international arbitral tribunal . . . is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of Iran against the United States, if such claims and counterclaims are outstanding on the date of this Agreement . . . and arise out of . . . contracts."

the Contract. This Claim, therefore, arises solely out of Iranian tax law and the Tribunal does not have jurisdiction to address it.

116. Second, IACI raises a counterclaim for the return of certain social insurance payments allegedly paid by IACI on GETSCO's behalf. Article X of the Contract provided that GETSCO was responsible for the payment of all social insurance and taxes arising thereunder and furthermore authorized IACI to make such payments and to deduct amounts from the fee paid to GETSCO to cover these payments. This provision states in relevant part that:

> Under the law of Iran, Seller is liable for all taxes, dues and charges whatsoever applied to him under this Contract. In this connection, Buyer shall pay to the authorities concerned any and all applicable taxes, duties, levies, imposts, charges, fees, or assessments of any nature, including without limitation SIO Contribution arising out of this Contract, for which Seller or Sellers personnel are liable to any central or local taxing authority of Iran, so that the payments by Buyer to Seller for the services hereunder shall be net of all taxes of Iran.

117. IACI does not allege that it made any payment to the SIO pursuant to this contract provision. The Tribunal therefore need not decide whether it would have authority to hear a claim by IACI for reimbursement of amounts actually paid by it to the SIO on GE's behalf, because IACI does not raise such a claim. IACI did not prove, nor even contend, that it made any payments to the SIO on GE's behalf, but rather simply claimed for amounts allegedly due but unpaid by GE to the SIO. A claim such as this falls within the jurisdictional bar and it is dismissed.

D. Interest

118. The Tribunal considers it appropriate to award the Claimant interest in accordance with the principles outlined in Sylvania, Award No. 180-64-1 at pp. 30-34, reprinted in 8 Iran-U.S. C.T.R. at 320-23. Under the principles outlined in Sylvania, successful claimants are awarded interest in an amount equal to the rate such a claimant would have been able to earn had it invested the sum awarded in a form of commercial investment common in its own country. For successful United States claimants, the Chamber customarily uses the average interest rate earned on six-month Certificate of Deposit for the period from the day following the date on which payment was due to the date on which the Escrow Agent instructs the Depository Bank to effect payment. The dates from which interest is to run are set forth in the relevant sections of this Award. See supra paras. 52, 60, 63, 69, 88, 92, 95, 106. In the context of this Case, the average rates will vary depending on the time period covered. Accordingly, the actual rates applied to the various elements of the Claim are set forth in the dispositif.

E. Costs

119. GE claims costs and legal fees related to this arbitration in the amount of $945,709.77, including legal fees of $840,787.50 and non-legal costs of $104,922.27. This amount includes approximately $14,000 in costs incurred as the result of the last minute cancellation of the Hearing in this Case scheduled for 22-23 November 1988 because the Respondents were unable to leave Iran.

120. Article 38, paragraph 1(c) of the Tribunal Rules requires the Tribunal to award legal fees to the prevailing

party "if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines the amount of such costs is reasonable." Article 40, paragraph 2 states further that the Tribunal "taking into account the circumstances of the case, shall be free to determine which party shall bear such costs between the parties if it determines that apportionment is reasonable." In deciding the proper amount of such costs to be awarded, the Tribunal has considered the nature and outcome of the proceedings including the complexity of the case and

the extent to which the prevailing party has been successful in its claims. See Sylvania, Award No. 180-64-1 at pp. 35-38, reprinted in 8 Iran-U.S. C.T.R. at 323-24. In this Case, involving extensive legal and factual issues, the Claimant has prevailed on three of its four claims, but failed on its largest claim. All of the counterclaims have been dismissed. Applying these factors, the Tribunal determines that $40,000 is a reasonable amount of GE's costs to be paid by the Respondents.

F. Award

121. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

1. The Respondent IRAN AIRCRAFT INDUSTRIES is obligated to pay the Claimant GENERAL ELECTRIC COMPANY the amount of $6,469,009 plus simple interest:

at an annual rate of 13.5 percent on $3,522,507 from 1 May 1979 up to and including 31 August 1981

at an annual rate of 15.75 percent on $3,525,093 from 1 September 1981 up to and including 10 December 1981

at an annual rate of 14.25 percent on $6,351,408 from 11 December 1981 up to and including 17 January 1982

at an annual rate of 12.5 percent on $6,401,975 from 18 January 1982 up to and including 31 December 1982

at an annual rate of 8.25 percent on $6,469,009 from 1 January 1983

up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

2. The Claimant GENERAL ELECTRIC COMPANY is obligated to pay the Respondent IRAN AIRCRAFT INDUSTRIES the amount of $4,171,462 plus simple interest at an annual rate of 10% from 19 March 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

3. The Escrow Agent is instructed to calculate the amount due to the Respondent IRAN AIRCRAFT INDUSTRIES under paragraph 2 of this dispositif and to offset that amount against the amount due to the Claimant GENERAL ELECTRIC COMPANY under paragraph 1 of this dispositif and to instruct the Depository Bank to make payment of the balance to the Claimant GENERAL ELECTRIC COMPANY; plus costs of arbitration in the amount of $40,000. The obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

4. The letters of credit numbers 03/90897, 08/91198, 10/91197, 00/91654, 09/93659, 11/95251, 02/94808, 00/88527, 03/96325 and 07/88640 issued by Bank Markazi; 308803 and 325149 issued by Irving Trust; 322110, 320888 and 324750 issued by Manufacturers Hanover; 9865200, 9933414 and 9902717 issued by Continental Bank; and 14471 and 14499 issued by Bank Melli have no further purpose. The Respondents shall withdraw any outstanding demands for payment in connection with the letters of credit, shall refrain from making any further demands thereon and shall take all reasonable steps to ensure that the letters of credit are released. The bank guarantees entered into by the Claimant are also of no further purpose and the Respondents shall withdraw any outstanding demands for payment in connection with the bank guarantees, shall refrain from making any further demands thereon and shall take all reasonable steps to ensure that they are released. The indemnity agreements entered into by the Claimant in order to obtain payment under the letters of credit are also of no further purpose and the Respondents shall take all reasonable steps to ensure that the Claimant is released from these indemnities.

5 GENERAL ELECTRIC is obligated to deliver to the agent of IRAN AIRCRAFT INDUSTRIES at its plant in the United States the items of equipment and materials mentioned in paragraphs 64 and 93 supra, provided that IRAN AIRCRAFT INDUSTRIES informs GENERAL ELECTRIC of the name and location of its agent.

6. The remaining Claims and Counterclaims are dismissed.

This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
15 March 1991

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name ~~of God~~

Assadollah Noori
Dissenting in Part,
Concurring in Part.

Howard M. Holtzmann
Joining fully in the Award, except joining solely in order to form a majority as to the Award of only $40,000 in costs, see my Separate Opinion on Awarding Costs of Arbitration in Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 329.